HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Saturday, May 20, 2017
85th Legislature, Number 76
The House convenes at 10:30 a.m.
Part Three

Thirty-five bills are on the daily calendar for second-reading consideration today. Those analyzed or digested in Part Three of today's *Daily Floor Report* are listed on the following page.

Dwayne Bohac
Chairman
85(R) - 76

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Saturday, May 20, 2017

85th Legislature, Number 76

Part 3

SUBJECT: Amending appraisal review board and related arbitration procedures

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — D. Bonnen, Y. Davis, Bohac, Darby, Murphy, Murr, Raymond, Shine, Springer, Stephenson

0 nays

1 absent — E. Johnson

SENATE VOTE: On final passage, April 10 — 31-0

WITNESSES: For — Paul Pennington, Citizens for Appraisal Reform; (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Adam Cahn, Cahnman's Musings; Rick Duncan, James Harris, Jay Propes, Citizens for Appraisal Reform; AJ Louderback and Ricky Scaman, Sheriffs' Association of Texas; Mark Mendez and Benny Glen Whitley, Tarrant County; James Popp, Tax Equity Council; Scott Norman, Texas Association of Builders; James LeBas, Texas Association of Manufacturers; Debbie Cartwright, Texas Taxpayers and Research Association; Russell Alexander; Micah Harmon)

Against — (*Registered, but did not testify*: Roland Altinger, Harris County Appraisal District; Marya Crigler, Texas Association of Appraisal Districts)

On — Dick Lavine

BACKGROUND: Tax Code, ch. 41A allows a property owner to request binding arbitration as an alternative to appealing to a district court to appeal a determination of an appraisal review board (ARB) on a protest of valuation.

Some observers note that property owners sometimes do not see ARBs as fair, independent, or qualified decision-makers. Some observers also note that binding arbitration may be preferable to litigation to keep costs down, but that many appeals are ineligible.

DIGEST:

CSSB 669 would change requirements on appraisal review board (ARB) members and appointment of ARB officers, modify procedures relating to ARB hearings, expand eligibility for arbitration, and create the Property Tax Administration Advisory Board.

ARB members and officers. While under current law the board of directors of the appraisal district appoints, by resolution, the chairman and secretary of the ARB, the bill would provide that the local administrative judge who usually appoints ARB members would appoint those officers.

The bill also would modify certain requirements relating to eligibility to be on an ARB, including capping the number of terms that an ARB member could serve at three.

Education and training. Courses that currently must be completed by ARB members before participating in ARB hearings would, under the bill, have to consist of at least eight hours of classroom training and education. Continuing education courses would be required to provide at least four hours of classroom training and education.

The bill would require that the training materials currently used to educate arbitrators under Tax Code, ch. 41A be freely available online and emphasize requirements on the equal and uniform appraisal of property. The comptroller could contract with a third party to create these materials, provided the program was not provided by an appraisal district or various related entities and did not cost more than $50 to train each arbitrator. The comptroller also would be required to create an arbitration manual for use in training to be approved by a committee of taxpayers and appraisers selected by the comptroller.

Under the bill, arbitrators would be required to complete the existing course for training and education of ARB members.

ARB hearings. Under the bill, an ARB would be prohibited from increasing the protested valuation of a property beyond the initial appraised value.

The bill also would prohibit an appraisal district from introducing

information, in a document or through argument or testimony, into an ARB hearing if the information was not delivered by the appraisal district to the property owner at least 14 days before the first hearing.

Any information requested by the property owner could be provided electronically by agreement. While current law allows an appraisal district to charge for copies provided in connection with a protest, the bill would require paper copies of documents be provided free of charge.

The bill would allow an ARB to hold a hearing on up to 20 properties with the same property owner on a single day, subject to certain notice and procedural requirements.

The bill also would change the times of day and days of the week that any hearing could occur.

ARB survey. While current law only requires an ARB to provide to a property owner a comptroller survey relating to the fairness and efficiency of the ARB before and at an ARB hearing, the bill would require the survey to be sent along with the ARB's decision on the property owner's protest.

Arbitration. While current law limits binding arbitration in Tax Code, ch. 41A of non-homestead property to properties valued at less than $3 million, the bill would raise this limit to $5 million. The required deposit and arbitrator fees would be correspondingly increased.

Property Tax Administration Advisory Board. The bill would create the Property Tax Administration Advisory Board, composed of members appointed by the comptroller to advise the comptroller on state oversight of appraisal districts and make recommendations on the efficiency of the property tax system and complaint resolution procedures. Members would include representatives of property taxpayers, appraisal districts and school districts, and at least one person who has knowledge in conducting ratio studies.

Effective date. This bill would take effect January 1, 2018, and would affect only ARB members and arbitrators appointed or protests and

requests for arbitration filed on or after that date.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have a negative impact of $406,000 through the fiscal 2018-19 biennium. Additionally, the bill could increase costs to the Foundation School Fund.

SUBJECT: Removing certain reporting requirements for certain state agencies

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 23 ayes — Zerwas, Longoria, Ashby, G. Bonnen, Cosper, Dean, Giddings, Gonzales, González, Howard, Koop, Miller, Muñoz, Perez, Phelan, Raney, Roberts, J. Rodriguez, Rose, Sheffield, Simmons, VanDeaver, Walle

0 nays

4 absent — Capriglione, S. Davis, Dukes, Wu

SENATE VOTE: On final passage, April 3 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Nanette Pfiester, Texas State Library and Archives Commission)

BACKGROUND: Since the 79th Legislature in 2005, a rider has been included in the general appropriations act to require the Texas State Library and Archives Commission to prepare a written report of all statutorily required reports prepared by and submitted to a state agency. The report includes an assessment from each receiving agency affirming or denying the continued usefulness of each report to that agency. The results have been used by the Legislature to streamline agency reporting requirements by repealing obsolete reports, reducing frequency of some reports, and redirecting some reports to relevant recipients.

DIGEST: SB 80 would repeal or modify certain reporting requirements in the Education Code, Government Code, Health and Safety Code, Human Resources Code, Utilities Code, and Water Code. The changes would include:

- repealing progress reports required of the Educational Economic Policy Center;
- removing the Sunset Advisory Commission as a recipient of state agency five-year strategic plans, annual agency internal audit reports, and an annual report from the Office of Public Utility Counsel;
- replacing the abolished Texas System of Care Consortium with the Health and Human Services Commission (HHSC) as the recipient of certain reports;
- excluding the governing body of the Department of Aging and Disability Services or its successor agency as a recipient of the annual progress report submitted by the Texas Interagency Council for the Homeless;
- removing programs implemented by the State Energy Conservation Office from an annual report from the Public Utility Commission to the Texas Commission on Environmental Quality (TCEQ); and
- removing the executive commissioner of HHSC from entities to which the Texas Council on Autism and Pervasive Development Disorders makes a biennial report.

The bill would amend HB 2 by Otto, the supplemental appropriations bill enacted by the 84th Legislature in 2015, to remove language that required HHSC to report certain information to the Legislative Budget Board (LBB) before making any capitation payments to managed care organizations that are adjusted using money appropriated under that bill.

The following provisions would be repealed:

- annual assessment of the Family Practice Residency Training Pilot Program;
- annual reports to the governor, lieutenant governor, and House speaker from the Residential Mortgage Fraud Task Force and from the comptroller on entities authorized to exercise eminent domain;
- quarterly activities reports from the Pollution Prevention Advisory Committee to the TCEQ;
- annual reports to the governor and LBB on the telephone collection program; and

- reports each fiscal quarter to the LBB on the financial status of the petroleum storage tank remediation account.

The bill would take effect September 1, 2017.

NOTES: A companion bill, HB 1885 by Price, was referred to the House Appropriations Budget Transparency and Reform subcommittee on March 29.

SUBJECT: Requiring an annual report on unfunded state programs

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 25 ayes — Zerwas, Longoria, Ashby, G. Bonnen, Capriglione, Cosper, S. Davis, Dean, Giddings, Gonzales, González, Howard, Koop, Miller, Muñoz, Perez, Phelan, Raney, Roberts, J. Rodriguez, Rose, Sheffield, Simmons, VanDeaver, Walle

0 nays

2 absent — Dukes, Wu

SENATE VOTE: On final passage, May 4 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Some have called for information to be provided to the Legislature about statutorily required state agency programs that do not receive appropriations, suggesting that such information would provide transparency on agency operations and could help reduce the size and scope of state government.

DIGEST: SB 1831 would require the comptroller to submit an annual report to the Legislature that identified for each state agency:

- each program the agency was statutorily required to implement for which no appropriation had been made for the preceding fiscal year, along with a citation to the law imposing the requirement; and
- the amount and source of money the agency had spent, if any, to implement any portion of the applicable program during the preceding fiscal year.

A state agency, defined as an agency, department, board, commission, or other entity in the executive, legislative, or judicial branch of state government, would be required to provide information necessary for the comptroller to prepare the report. The information would be due by

September 30 of each year and the comptroller would be authorized to prescribe the form and content of the required information.

The comptroller's report would be due by December 31 of each year, with the initial report due by December 31, 2017.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUBJECT: Adjusting HHSC auditing procedures, creating electronic visit verification

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Raymond, Frank, Keough, Klick, Miller, Rose, Swanson, Wu

0 nays

1 absent — Minjarez

SENATE VOTE: On final passage, April 18 — 31-0

WITNESSES: No public hearing

BACKGROUND: In 1991, the 72nd Legislature established a Medicaid managed care pilot program. In managed care programs, a managed care organization (MCO) is paid for each client enrolled, and clients receive health care services through a network of providers that have contracted with the MCO. Most of the state's Medicaid population is now enrolled in managed care.

The Health and Human Services Commission (HHSC) contracts with two audit firms for annual agreed-upon procedures (AUP) engagements and periodic performance audits. AUP engagements verify financial reports submitted by MCOs to determine whether those organizations owe money under the state's Medicaid rebate requirements. Performance audits assess the effectiveness of MCO internal controls.

A report issued by the State Auditor's Office in 2016 found that HHSC did not sufficiently follow up on issues identified from AUP engagements and performance audits. Certain individuals contend that the HHSC audit procedures should be adjusted to address major issues identified in audit findings. Further, some parties believe that an electronic visit verification system to ensure the provision of certain services could improve deficiencies that exist within the Medicaid process.

DIGEST: CSSB 894 would amend Health and Human Services Commission (HHSC) auditing procedures and implement an electronic verification

system.

Audit resources management strategy. CSSB 894 would require HHSC to develop and implement an overall strategy to plan, manage, and coordinate audit resources used to verify the accuracy and reliability of program and financial information reported by managed care organizations (MCOs).

The provisions of the bill would not apply to and could not be construed as affecting the conduct of audits by HHSC's Office of Inspector General.

Performance audit selection process and follow-up. HHSC would be required to document the process by which MCOs were selected to be audited, include previous audit coverage as a risk factor, and prioritize the most high-risk MCOs to audit. The commission also would have to establish a process to document its follow-up on negative performance audit findings and verify that MCOs implemented performance audit recommendations. The bill also would require HHSC to establish and implement policies to determine under what circumstances the commission would issue a corrective action plan to an MCO and follow up on the implementation of the plan.

Agreed-upon procedures (AUP) engagements. HHSC would be required to ensure that financial risks identified in AUP engagements were adequately and consistently addressed and to establish policies to determine under what circumstances the commission would issue a corrective action plan.

Pharmacy benefit manager audits. The bill would require HHSC to periodically audit each pharmacy benefit manager that contracted with an MCO and develop, document, and implement a monitoring process to ensure that MCOs resolved negative findings reported in performance audits or AUP engagements.

Cost collection. HHSC would be required to develop, document, and implement billing processes in the Medicaid and Children's Health Insurance Program (CHIP) services department to ensure that MCOs reimbursed the commission for audit-related services.

HHSC also would have to develop, document, and implement monitoring processes in the Medicaid and CHIP services department to ensure that the commission identified experience rebates deposited in the suspense account, transferred those rebates to appropriate accounts, and resolved disputes of experience rebates claimed by MCOs.

External quality review information. The bill would require HHSC to use the information provided by the external quality review organization, including data from surveys of Medicaid recipients and providers, CHIP enrollees or providers, and caregivers, as well as the validation results of matching paid claims data with medical records. HHSC would have to document how the commission used that information to monitor MCOs.

Security and processing controls over IT systems. HHSC would be required to strengthen user access controls for the accounts receivable tracking system and network folders used to manage experience rebate collections. The commission also would have to document daily reconciliations of deposits in the accounts receivable tracking system to the transactions processed in the cost accounting system for all health and human services agencies and the uniform statewide accounting system. The bill would require HHSC to implement a process to ensure that the commission formally documented all programming changes made to the accounts receivable tracking system and the authorization and testing of the changes.

Electronic verification system. CSSB 894 would require HHSC to implement an electronic visit verification system to verify through a phone, global positioning, or computer-based system that personal care services or attendant care services provided under any Medicaid waiver program were provided to Medicaid recipients. The system would have to verify only the type of service provided; the name of the recipient and the provider; the location, date, and time of the service delivery; and other information necessary to ensure accurate adjudication of Medicaid claims.

A health care provider would have to use the verification system to document the provision of services, comply with all documentation requirements, comply with laws on confidentiality, and ensure that the

commission or MCO could review the documentation at no charge.

The executive commissioner of HHSC would have to adopt certain compliance standards in implementing the system to ensure that reporting was standardized across MCOs and that the time frames for maintenance of data aligned with claims payment time frames.

The bill would require HHSC to inform each Medicaid recipient receiving personal or attendant care services that the provider and the recipient were required to comply with the electronic visit verification system. An MCO also would have to inform recipients of those requirements.

HHSC would have to establish minimum requirements for third-party entities seeking to provide electronic visit verification system services and certify that those entities complied with the requirements before serving a provider.

HHSC or an MCO could not pay a claim for reimbursement for services provided to a recipient unless the information from the electronic visit verification system corresponded with information in the claim. A previously paid claim would be subject to retrospective review and recoupment if unverified.

The bill would require HHSC to create a stakeholder work group composed of representatives of affected health care providers, MCOs, and Medicaid recipients. The commission would periodically solicit from the group input on the ongoing operation of the electronic visit verification system.

The executive commissioner could adopt rules to implement this system.

Notice of proposed recoupment. CSSB 894 would require HHSC to provide a notice of proposed recoupment of overpayment or debt to a hospital at least 90 days before the payment would have to be made.

Effective date. CSSB 894 would take effect September 1, 2017. As soon as practicable after that date, HHSC would have to implement an electronic visit verification system and adopt the rules necessary to

implement the provisions of the bill.

NOTES:

According to the Legislative Budget Board's fiscal note, CSSB 894's fiscal implications cannot be determined at this time, but it could result in a significant fiscal impact to the state. The bill could increase operational costs for managed care organizations, depending on the extent to which the Health and Human Services Commission (HHSC) adjusted managed care premiums.

CSSB 894 differs from the Senate-passed version by requiring HHSC to implement an electronic visit verification system to verify that certain Medicaid services were provided.

A companion bill, HB 3596 by Muñoz, was referred to the House Human Services Committee on March 30.

SUBJECT: Administrative attachment of Forensic Science Commission to OCA

COMMITTEE: Judiciary & Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi

1 nay — Schofield

SENATE VOTE: On final passage, (March 22) — 29-0

WITNESSES: No public hearing

BACKGROUND: Code of Criminal Procedure, art. 38.01 establishes the Texas Forensic Science Commission (FSC) composed of nine gubernatorial appointments. Under Code of Criminal Procedure, art. 38.01, sec. 9, the commission is administratively attached to Sam Houston State University, and the board of regents of the Texas State University System is required to provide administrative support to the commission. Only the commission can perform its duties, and neither Sam Houston State University nor the board of regents of the Texas State University System has responsibility or authority over those duties.

The Texas Forensic Science Commission's duties include investigating allegations of professional negligence or professional misconduct by forensic laboratories, conducting certain other investigations of forensic analysis to advance the integrity and reliability of the forensic science in Texas, managing the crime laboratory accreditation program, licensing forensic analysts, and coordinating education and training programs on forensic science.

DIGEST: SB 1124 would move the Texas Forensic Science Commission's administrative attachment from Sam Houston State University to the Office of Court Administration (OCA). The Office of Court Administration would be required to provide administrative support to the commission, and OCA would not have any authority or responsibility for the commission's duties.

The bill would take effect September 1, 2017, and as soon as practicable after that date, Sam Houston State University and the OCA would be required to adopt a memorandum of understanding for the transfer.

SUPPORTERS SAY:

SB 1124 would move the administrative attachment of the Forensic Science Commission to a more appropriate entity. When the commission was created about 12 years ago, it was attached to Sam Houston State University as a special item due to the university's experience in criminal justice programs and to avoid creating a small, stand-alone agency. The FSC is now an established entity with three staff members in Austin, making it more appropriate to place its administrative functions with a state agency. Special-items status in higher education is often used to start new initiatives and not the best fit for a traditional state commission.

SB 1124 would place the commission’s administrative functions under a more logical entity. Sam Houston State University's core function is academics, and the FSC is generally an oversight body. OCA provides administrative support to similar entities, including the Texas Indigent Defense Commission and the Judicial Branch Certification Commission. SB 1124, with a transfer of the commission's budget in the general appropriations act, would allow OCA to handle commission support functions such as payroll, purchasing, and information technology within existing resources.

Under the bill, the commission would continue to operate independently and only its administrative functions would move. SB 1124 is narrowly focused on the administrative support for the Forensic Science Commission and not on its duties or purpose.

OPPONENTS SAY:

Rather than just move the Forensic Science Commission's administrative functions to a new state agency, it could be best to examine the agency's functions and duties.

SUBJECT: Directing fees to the low-level radioactive waste fund

COMMITTEE: Environmental Regulation —favorable, without amendment

VOTE: 7 ayes — Pickett, Cyrier, Dale, Kacal, Landgraf, Reynolds, E. Rodriguez

0 nays

2 absent — E. Thompson, Lozano

SENATE VOTE: On final passage, May 2 — 30-1 (Bettencourt)

WITNESSES: No public hearing

BACKGROUND: Health and Safety Code, ch. 403 establishes the Texas Low-Level Radioactive Waste Disposal Compact Commission. States that are party to the compact enter into agreements for the efficient management and disposal of low-level radioactive waste.

Health and Safety Code, sec. 401.245 requires a compact waste disposal facility license holder who receives compact waste from a party state to collect a fee to be paid by each person who delivers waste to the compact waste disposal facility. The fee must be periodically adjusted based on the projected volume of low-level radioactive waste received, the relative hazard of the waste, and other associated costs. Sec. 401.246 requires that the fee collected be sufficient to cover certain costs related to the compact waste facility and the compact commission. The fee is deposited to the credit of the Environmental Radiation and Perpetual Care Account.

Sec. 401.249 establishes the Low-Level Radioactive Waste Fund as a general revenue dedicated account within the state treasury.

Some have suggested that applicable state compact waste disposal fees that support compact activities be deposited in the fund that most closely corresponds to the purpose for which the fees are collected.

DIGEST: SB 1330 would require the Texas Commission on Environmental Quality

to deposit in the Low-Level Radioactive Waste Fund, rather than the Environmental Radiation and Perpetual Care Account, the portion of the party state compact waste disposal fees that were calculated to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission. The bill would specify that the calculation would be in accordance with certain statutory criteria regarding the costs that the fee must cover.

The bill would take effect September 1, 2017, only if a specific appropriation for its implementation was provided in the general appropriations act of the 85th Legislature.

NOTES: According to the Legislative Budget Board, the bill would have a negative impact of $222,000 to general revenue related funds for the fiscal 2018-19 biennium and in subsequent biennia.

SUBJECT: Reorganizing administrative judicial regions

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

SENATE VOTE: On final passage, May 4 — 30-1 (Creighton)

WITNESSES: No public hearing

BACKGROUND: Concerns have been raised about the increased workloads for certain administrative judicial regions and that some district courts are split between regions, resulting in two different presiding judges for a single court.

DIGEST: SB 1893 would create the Tenth and Eleventh Administrative Judicial regions, and add Robertson County to the Third Administrative Judicial Region.

The Tenth Administrative Judicial Region would be composed of Anderson, Bowie, Camp, Cass, Cherokee, Delta, Fannin, Franklin, Freestone, Gregg, Harrison, Henderson, Hopkins, Houston, Hunt, Lamar, Leon, Limestone, Marion, Morris, Nacogdoches, Panola, Rains, Red River, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt, and Wood counties.

The Eleventh Administrative Judicial Region would be composed of of Brazoria, Fort Bend, Galveston, Harris, Matagorda, and Wharton counties.

On September 1, 2017, the governor would appoint, with the advice and consent of the Senate, presiding judges for the Tenth and Eleventh Administrative Judicial regions, as well as any region for which a vacancy was created by the realignment.

The presiding judges of the First through Ninth regions would be required to develop and adopt budgets for the Tenth and Eleventh regions that included an assessment for each county included in the new regions. By a majority vote, the presiding judges could transfer money to the Tenth and Eleventh regions as necessary.

The bill also would require councils to collect judicial statistics and other pertinent information about the amount and character of any business transacted by the presiding judges. Presiding judges would be required to report monthly such information.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUBJECT: Assessing low-risk criminal offenses of prospective kinship caregivers

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Raymond, Frank, Keough, Klick, Miller, Rose, Swanson, Wu

0 nays

1 absent — Minjarez

SENATE VOTE: On final passage, May 3 — 27-4 (Huffines, Kolkhorst, Nelson, Nichols)

WITNESSES: No public hearing

BACKGROUND: Family Code, sec. 264.754 requires the Department of Family and Protective Services to conduct an investigation to determine whether a proposed placement with a relative or other designated caregiver is in the child's best interest.

DIGEST: SB 879 would require the Department of Family and Protective Services (DFPS) to conduct an assessment, rather than an investigation, to determine whether a proposed placement with a relative or other designated caregiver was in the child's best interest.

If DFPS disqualified a person from serving as a kinship caregiver for a child based on a person's conviction of a low-risk criminal offense, the bill would allow a person to appeal the disqualification through a procedure developed by DFPS. The bill would define a low-risk criminal offense as a nonviolent criminal offense, including a fraud-based offense, that DFPS determined had a low risk of impacting a child's safety or well-being, or the stability of a child's placement with a relative or other designated caregiver.

The bill would require DFPS to develop a list of low-risk criminal offenses and a procedure for DFPS regional administration to review decisions that disqualified persons from serving as kinship caregivers. The procedure would have to consider:

- when the person's conviction occurred;
- whether the person had multiple convictions for low-risk criminal offenses; and
- the likelihood that the person would commit fraudulent activity in the future.

DFPS would have to publish on its website a list of low-risk criminal offenses and provide information about the review procedure to prospective caregivers.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

SB 879 would increase procedural consistency and allow prospective caregivers with low-risk criminal offenses to appeal decisions made by the Department of Family and Protective Services (DFPS) that denied them from serving as kinship caregivers. The bill would help DFPS regional directors apply consistent standards regarding the evaluation of a prospective caregiver's criminal history by clearly defining non-violent offenses that pose a minimal risk of impacting a child's safety or placement stability.

The bill would not automatically qualify prospective kinship caregivers with low-risk criminal offense convictions to serve as placements for children. It would only provide a process for these caregivers to appeal DFPS decisions that disqualified them from serving as kinship caregivers based on a low-risk criminal offense.

OPPONENTS SAY:

Considering fraudulent activity as a low-risk criminal offense could put a child at risk. The bill would not protect vulnerable children from exploitation by kinship caregivers who might only be interested in serving as caregivers in order to receive financial assistance.

SUBJECT: Using risk mapping for prevention and early intervention services

COMMITTEE: Human Services — favorable, without amendment

VOTE: 5 ayes — Raymond, Keough, Miller, Rose, Wu

3 nays — Frank, Klick, Swanson

1 absent — Minjarez

SENATE VOTE: On final passage, April 27 — 28-3 (Hall, Huffines, Kolkhorst)

WITNESSES: No public hearing

DIGEST: SB 687 would establish requirements for the disclosure and use of collected data for risk mapping systems and assessments for prevention and early intervention (PEI) services.

Risk mapping. The bill would allow the Department of Family and Protective Services (DFPS) to develop and use risk mapping, including risk terrain modeling systems, predictive analytic systems, or geographic risk assessments to:

- identify geographic areas of the state that have a high incidence of child maltreatment and child fatalities resulting from abuse or neglect;
- identify family dynamics and other factors indicating a high risk of child maltreatment and child fatalities resulting from abuse or neglect;
- offer opportunities to provide voluntary prevention services to individuals who exhibit certain risk factors or who live in an area with a high incidence of child maltreatment and child fatalities; and
- guide decisions about the allocation of resources for prevention and early intervention (PEI) programs and services.

The bill would allow the Health and Human Services Commission (HHSC), on behalf of DFPS, to enter into agreements with higher

education institutions to develop or adapt, in coordination with DFPS, a risk mapping system or assessment.

Review of PEI services. Subject to available funds, the bill would require HHSC, on behalf of DFPS, to enter into agreements with higher education institutions to conduct efficacy reviews of any PEI programs that had not previously been evaluated for effectiveness through a scientific research evaluation process.

The bill also would require DFPS, subject to available funds, to create and track indicators of child well-being to determine the effectiveness of PEI services.

Data limitations. Unless a governmental entity gathered or received information under other authority, the bill would prohibit the governmental entity from using information that identified an individual or family to provide targeted involuntary intervention services. A governmental entity that gathered or received information that identified an individual or family would be required to adopt rules to ensure that:

- the use or disclosure of the information was restricted to the risk mapping system or PEI program efficacy review; and
- only individuals with a justified and documented business need were allowed to access the information.

Collected information for the risk mapping system or PEI program efficacy review would be confidential and not subject to disclosure under the Public Information Act. The information also would be subject to all applicable state and federal privacy laws and rules.

The bill would require the HHSC executive commissioner to adopt rules on the use and disclosure of information gathered or received for the risk mapping system or PEI program efficacy review, including rules:

- identifying persons who could receive the information;
- creating security procedures to protect the information, including requiring the use of nondisclosure agreements; and

- enacting any other restriction the HHSC executive commissioner deemed appropriate.

Data sharing. The bill would require the Texas Education Agency, the Texas Juvenile Justice Department, the Department of State Health Services, the Department of Public Safety, and HHSC to disclose information relevant to preventing or reducing the risk factors for child abuse or neglect or juvenile delinquency to the PEI services division at DFPS.

Criminal penalty. The bill would establish a criminal offense for violating the restrictions on use or disclosure of information as specified in the bill or adopted rules. A first-time offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000). A subsequent offense would be a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000).

Effective date. The bill would take effect September 1, 2017.

SUPPORTERS SAY:

SB 687 would enable the Department of Family and Protective Services (DFPS) to allocate its resources more effectively by using a risk mapping system to identify gaps in prevention and early intervention (PEI) services for geographic areas susceptible to high rates of child maltreatment and child fatalities. Developing a risk mapping system and requiring certain agencies to disclose data to the PEI division would provide DFPS with essential data to help prevent and minimize fatalities, abuse, and neglect among vulnerable populations of children.

The bill explicitly would prohibit governmental entities from using acquired information to target individuals or families with involuntary intervention services. The risk mapping system would be an effective tool for DFPS to take proactive measures to protect children and families in various communities.

OPPONENTS SAY:

SB 687 would expand the ability of the Department of Family and Protective Services (DFPS) to target specific geographic areas based on vague risk factors. Requiring multiple governmental agencies to disclose data to the PEI division at DFPS would raise privacy concerns. The bill

should clearly delineate the content of information subject to disclosure from other agencies to the PEI division because different agencies could consider different actions as risk factors for child abuse or neglect.

SUBJECT: Aligning anti-lapse statute with the transfer-on-death deed

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 3121*:
For — Trish McAllister, Texas Access to Justice Commission

Against — None

BACKGROUND: Estate Code, ch. 114 creates a transfer-on-death deed (TODD) instrument. The TODD allows a property owner to transfer real property to a beneficiary upon the owner's death without going through the probate process. A standard TODD form appears under sec. 114.151.

Sec. 114.103(a)(2) provides that when there is one beneficiary who does not survive the transferor by 120 hours, the beneficiary's interest lapses, or becomes void. Sec. 114.103(a)(4) provides that when there are two or more beneficiaries and one dies before the transferor, the anti-lapse statute (Estates Code, ch. 255, subch. D) applies, and the deceased beneficiary's share is divided among his or her surviving descendants.

Concerns have been raised that under the TODD laws, the anti-lapse statute applies only in cases in which the deceased individual had designated more than one beneficiary on the deed and that it should also apply when there is one beneficiary.

DIGEST: SB 2150 would provide that Estates Code, ch. 255, subch. D applied to a transfer-on-death deed (TODD) regardless of the number of beneficiaries a deceased individual had designated.

SB 2150 also would make relevant changes to the language in the Estate Code's TODD instrument and would provide three additional sections on the TODD forms. The three new sections would allow transferors to note their preference in the event of different scenarios involving predeceased beneficiaries, including when at least one primary beneficiary survived the property owner, when no primary beneficiary survived the property owner, and when no alternate beneficiaries survived the property owner.

The bill would take effect September 1, 2017, and would apply to a TODD executed and acknowledged on or after that date.

NOTES:

A companion bill, HB 3121 by Farrar, was reported favorably by the House Judiciary and Civil Jurisprudence Committee on May 4 and placed on the General State Calendar for May 11.

SUBJECT: Specifying the term of a chief administrative law judge

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 13 ayes — Cook, Giddings, Craddick, Farrar, Geren, Guillen, K. King, Kuempel, Meyer, Oliveira, Paddie, E. Rodriguez, Smithee

0 nays

SENATE VOTE: On final passage, April 3 — 31-0

WITNESSES: No public hearing

BACKGROUND: Government Code, sec. 2003.022 places the State Office of Administrative Hearings (SOAH) under the direction of a chief administrative law judge appointed by the governor for a two-year term and makes the judge eligible for reappointment. Interested observers note the need to specify the expiration date of the chief administrative law judge's term to avoid confusion and bring predictability to the leadership of SOAH.

DIGEST: SB 528 would specify that the two-year term of the chief administrative law judge for the State Office of Administrative Hearings would expire on May 15 of each even-numbered year.

The bill would take effect September 1, 2017.

SUBJECT: Establishing security requirements for privately operated high-speed rail

COMMITTEE: Transportation — favorable, without amendment

VOTE: 9 ayes — Morrison, Martinez, Burkett, Y. Davis, Israel, Minjarez, Simmons, E. Thompson, Wray

1 nay — Phillips

3 absent — Goldman, Pickett, S. Thompson

SENATE VOTE: On final passage, April 24 — 24-6 (Burton, Estes, Hall, Huffines, Nelson, V. Taylor)

WITNESSES: No public hearing

DIGEST: SB 975 would create a new subchapter in Transportation Code, ch. 112 to govern security for high-speed rail operated by a private entity.

High-speed rail operator's security duties. A private operator of a passenger rail service that was reasonably expected to reach speeds of at least 110 mph would be required to implement all security requirements of the federal Transportation Security Administration (TSA) or its successor agency, in the manner required by law for intercity passenger railroads. The operator also would have to conduct periodic risk-based threat and vulnerability assessments and, in consultation with TSA, implement appropriate security measures based on results of the assessments. The high-speed rail operator would have to collect and investigate security threat reports submitted by members of the public.

An operator would require employees who were managers or supervisors and whose position included emergency management responsibilities to complete emergency management training under the Texas Disaster Act of 1975 (Government Code, sec. 418.005), as provided by the Department of Public Safety (DPS).

Coordination with other entities. A high-speed rail operator would be

required to coordinate security activities and investigations with federal, state, and local law enforcement agencies, including communication about credible threats, major events, and vulnerable places along the rail line or on a train. The operator also would have to communicate, as appropriate, with the state Emergency Management Council and the Texas Division of Emergency Management.

The services of a peace officer employed by the state or a political subdivision could not be used unless the high-speed rail operator compensated the state or political subdivision for the officer's time.

DPS' powers and duties. DPS would be required to administer and enforce the provisions of the bill and could adopt rules that were consistent with applicable federal rules, regulations, and standards as necessary to do so. DPS would have the same regulatory authority over railroads granted to the Texas Department of Transportation under state law.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

SB 975 is necessary to ensure public safety during the operation of any future privately operated high-speed rail in Texas. The private operator would have to work with the Legislature and appropriate state and federal agencies to enforce transportation safety regulations and thereby ensure the safe entry, exit, and passage of all passengers and employees during the operation of a rail system. These measures also would help protect the safety of communities in and around the rail routes. This collaborative approach is the only way a comprehensive security plan could emerge. The bill is not intended to burden any private entity but rather provide for a baseline of public safety as it relates to high-speed rail in Texas.

OPPONENTS SAY:

SB 975 would add an unnecessary layer of regulation and define security measures for a system that does not exist. While the requirements of the bill could theoretically apply to any prospective high-speed rail project in the state, there currently is only one project under development. In practical terms, the effects of the bill would be aimed at that particular

project. In any event, if a privately operated high-speed rail existed in Texas, private industry could meet the security needs of passengers without government mandates.